

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

ANGEL DAVID MORALES  
VALLELLANES,  
Plaintiff,

v.

JOHN POTTER, UNITED STATES  
POSTMASTER GENERAL, ET ALS.,  
Defendants.

CIVIL NO. 97-2459 (GAG)

DAMAGES BASED ON  
RETALIATION AND  
DISCRIMINATION; PROHIBITED  
PERSONNEL PRACTICES; UNFAIR  
LABOR PRACTICES; BREACH OF  
COLLECTIVE BARGAINING  
AGREEMENT

TRIAL BY JURY IS HEREBY  
REQUESTED

MOTION TO SET ASIDE ORDER

COMES NOW, plaintiff Angel David Morales-Vallellanes through his legal counsel and very respectfully inform this Honorable Court:

1. On this date November 2<sup>nd</sup>, 2006 Plaintiff filed at 10:08 A.M. as docket number 324 a motion requesting an order to preclude defendant the use of his expert witness, doctor Ramón O. Fortuño and his expert report if any.
2. The above mentioned request is due to Defendant failure to comply with this Honorable Court order that “...*defendants’ expert report must be provided on or before November 1, 2006. No further extensions will be allowed*”. (See docket #313)
3. At 10:11 a.m. this same date November 2<sup>nd</sup>, 2006 just three (3) minutes after Plaintiff above mentioned transaction (motion) was received by the court as document number 324 an e-mail was received from United States Attorney’s Office Legal Assistant Luis M. Rodríguez Nieves attaching copy of doctor Fortuño’s preliminary report (**not even a final report**) and notifies that said report was forwarded to the undersigned via regular mail yesterday (November 1, 2006). (Exhibit I)

4. Defendant on paragraph number 2 of his motion informs that doctor Fortuño forwarded his preliminary report yesterday, November 1<sup>st</sup>, 2006 and was forwarded to Plaintiff, via regular mail. The information given by Defendant is inconsistent with the fact that the report included in the e-mail is preliminary as is also dated October 14, 2006. (See copy of doctor Fortuño's 1<sup>st</sup> page report as Exhibit II)

In accordance to the above information the report provided untimely is not final but also was available since October 14, 2006.

5. This Honorable Court denied Plaintiff motion to preclude Defendants expert witness. (See docket 326)

6. Unquestionably Defendant did not provide the expert witness report within the term ordered by this Honorable Court, that is on or before November 1<sup>st</sup>, 2006. To the contrary, the report included in the e-mail by legal assistant Luis M. Rodríguez as the attachment included in Defendant's (docket 325)opposition **is not a final report but a merely preliminary report and was provided late.**

7. If Defendant's intention was to timely provide his expert report and comply with the Court's order various options were available as said party or his attorney could have:

- a. faxed the expert report to Plaintiff's attorney's office;
- b. Scan the expert report and electronically mail it to the undersigned within the time frame, this is, on or before November 1, 2006;
- c. Pursuant to this Court's Standing Order for CM/ECF, he could have filed a motion informing his attempts to timely provide the expert witness report using the CM/ECF system, which will submit notification of such filing to the undersigned;

- d. He should had called Plaintiff's attorney at his office or cellular phone in order to timely provide his expert report and comply with this Honorable Court's order.

The Defendant did not pursue any of the foregoing options, moreover the provided report is a preliminary one as it is identified by doctor Fortuño himself.

**WHEREFORE**, it is respectfully requested from this Honorable Court to set aside this Honorable Court order notified on November 2, 2006 (docket #326), and therefore, preclude said party the use of his expert witness for not providing his expert report.

**RESPECTFULLY SUBMITTED.**

**I HEREBY CERTIFY** that on November 2, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: **Fidel A. Sevillano-Del Río, Esq.**, Assistant U.S. Attorney, Federico Degetau Federal Build., 150 Carlos Chardón Av., Hato Rey, Puerto Rico 00918.

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